**Huntington Ingalls Incorporated**[1] ***and*** **International Association of Machinists and Aerospace Workers, AFL–CIO.** Case 05–CA–081306

August 14, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HAYES AND GRIFFIN

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on May 18, 2012, the Acting General Counsel issued the complaint on May 31, 2012, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 05–RC–016292.[2] (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer and an amended answer, admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On June 19, 2012, the Acting General Counsel filed a Motion for Summary Judgment. On June 21, 2012, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent denies its refusal to bargain, and contests the validity of the certification based on its objections to the election and the Board's unit determination in the representation proceeding.[3] In addition, the Respondent contends that the Board as presently constituted lacks the quorum necessary to adjudicate the issues raised in the complaint. The Respondent also argues that the complaint is ultravires and should be dismissed because the Acting General Counsel lacks the authority to issue the complaint in this case.[4]

The Respondent further contends that the Board abused its discretion in the underlying representation proceeding by applying the standard announced in *Specialty Healthcare & Rehabilitation Center of Mobile,* 357 NLRB 934 (2011), which it also argues was wrongly decided. This is an argument that the Respondent could have raised on a motion for reconsideration of the Board's underlying decision. See e.g., *Randell Warehouse of Arizona, Inc.*, 330 NLRB 914, 914 fn. 1 (2000), enf. denied on other grounds 252 F.3d 445 (D.C. Cir. 2001). Hence, we regard this contention as untimely raised.[5]

In any event, we find no merit in this contention. As explained in the underlying representation decision, the Board recognizes a presumption in favor of the retroactivity of new rulings in representation cases. 357 NLRB at 2017 fn. 8. We see no circumstances in this case that would overcome that presumption. Further, we see no prejudice to the Respondent. In the underlying decision, the Board addressed the Respondent's arguments regarding the appropriateness of the petitioned-for unit and reached the same conclusion under the cases the Respondent relied on as it did applying *Specialty Healthcare*. Id. Therefore the Respondent cannot reasonably argue that it was denied due process.[6]

Consequently, all representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not

[1] In accord with the Respondent's answer to the complaint and the Acting General Counsel's motion, the case caption has been changed to reflect the correct name of the Respondent.

[2] The Board's Decision on Review and Order in the representation proceeding issued under the name *Northrop Grumman Shipbuilding, Inc*., 357 NLRB 2015 (2011).

[3] The Respondent's answer denies the complaint allegations that the unit is appropriate; that the Union was certified as the exclusive collective-bargaining representative of the unit; that it has refused to bargain with the Union as the exclusive collective-bargaining representative of a properly constituted unit; that its conduct violates the Act; and that its conduct affects commerce within the meaning of the Act. However, the issues regarding the appropriateness of the unit and the Union's certification were litigated and resolved in the underlying representation proceeding. In addition, the Acting General Counsel attached to his motion as Exh. 10 a letter dated May 8, 2012, from the Respondent to the Union, "respectfully declin[ing] your invitation to bargain." The Respondent does not contest the authenticity of this letter. Accordingly, the Respondent's denials with respect to these complaint allegations do not raise any litigable issues in this proceeding.

[4] For the reasons set forth in *Center for Social Change, Inc.*, 358 NLRB 161 (2012), we reject these arguments.

[5] In Member Hayes' view, the Respondent's failure to file a motion for reconsideration of the Board's underlying decision does not preclude it from raising to the Court of Appeals its arguments regarding both the Board's decision to apply *Specialty Healthcare & Rehabilitation Center of Mobile,* supra, to the facts of this case and the Board's decision on the merits in *Specialty Healthcare.*

[6] We also reject the Respondent's argument that the Board further abused its discretion by using the adjudicative process to create a new, generally applicable standard for determining appropriate bargaining units. As the Board earlier noted, it "has for 75 years developed the meaning of the statutory term 'an appropriate unit' through adjudication. . . . The Supreme Court has approved the Board's use of adjudication in addressing the broad range of issues arising under the Act." *Specialty Healthcare & Rehabilitation Center of Mobile,* 356 NLRB 289, 291 (2010) (internal footnotes omitted). We further reject the Respondent's argument that the Board's underlying decision contravenes Sec. 9(b) or (c)(5).

offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.[7]

On the entire record, the Board makes the following

## FINDINGS OF FACT

### I. JURISDICTION

At all material times, the Respondent, a Virginia corporation,[8] with its principal office and place of business in Newport News, Virginia, has been engaged in constructing, overhauling and refueling nuclear-powered submarines and aircraft carriers for the United States Navy. During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations described above, has provided construction, overhaul, and nuclear core refueling services valued in excess of $50,000 directly to the United States Navy, Department of Defense.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, International Association of Machinists and Aerospace Workers, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

#### *A. The Certification*

Following the representation election held June 25, 2009, the Union was certified on February 24, 2012, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time radiological control technicians, radiological control technician trainees, laboratory technicians, and calibration technicians employed in Department E85 at the Respondent's facility in Newport News, Virginia; but excluding all other employees, all office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

#### *B. Refusal to Bargain*

By letter dated April 14, 2012, the Union requested that the Respondent recognize it and engage in collective bargaining and, since May 8, 2012, the Respondent has refused to do so. We find that the Respondent's failure and refusal to recognize and bargain with the Union constitutes a violation of Section 8(a)(5) and (1) of the Act.

## CONCLUSION OF LAW

By failing and refusing since May 8, 2012, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody that understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning on the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

## ORDER

The National Labor Relations Board orders that the Respondent, Huntington Ingalls Incorporated, Newport News, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Association of Machinists and Aerospace Workers, AFL–CIO as the exclusive collective-bargaining representative of the employees in the bargaining unit.

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[7] Member Hayes dissented from the Board's Decision on Review. He would have found the unit inappropriate and dismissed the petition. While Member Hayes remains of that view, he agrees that the Respondent has not presented any new matters that are properly litigable in this unfair labor practice case.

[8] The Respondent's answer and the Acting General Counsel's motion indicate that the complaint incorrectly states that the Respondent is a Delaware corporation rather than a Virginia corporation. We correct this error.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time radiological control technicians, radiological control technician trainees, laboratory technicians, and calibration technicians employed in Department E85 at the Respondent's facility in Newport News, Virginia; but excluding all other employees, all office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Newport News, Virginia, copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.[10] Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed its facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 8, 2012.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

## APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with International Association of Machinists and Aerospace Workers, AFL–CIO as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, recognize and bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

> All full-time and regular part-time radiological control technicians, radiological control technician trainees, laboratory technicians, and calibration technicians employed in Department E85 at our facility in Newport News, Virginia; but excluding all other employees, all office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

HUNTINGTON INGALLS INCORPORATED

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[10] For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB 11 (2010), Member Hayes would not require electronic distribution of the notice.